

**Filed**

DEC 17 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

1 Ignacio Polvos Pena, D-17862  
 2 Calif. State Prison-Solano 15-E2-L  
 3 Post Office Box 4000  
 4 Vacaville, Calif. 95696-4000  
 5 Petitioner/Pro Se

6  
 7 IN THE UNITED STATES DISTRICT COURT  
 8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 IGNACIO POLVOS PENA,

10 Petitioner,

11 vs.

12 D.K. SISTO, WARDEN,

13 Respondent.

) No. C 07-03056 JW (PR)  
 ) PETITIONER'S OPPOSITION TO RESPONDENT'S  
 ) MOTION TO DISMISS; WITH REQUEST FOR  
 ) LEAVE OF COURT TO FILE LATE OPPOSITION  
 ) TO RESPONDENT'S MOTION; PURSUANT TO  
 ) FED.R.CIVIL P. 6.

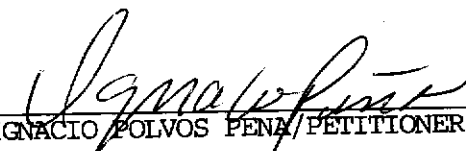
14 Petitioner, Ignacio Polvos Pena, (Petitioner) a state prisoner incarcerated  
 15 at the California State Prison Solano in Vacaville, California, has filed a  
 16 pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging  
 17 the California Board of Parole Hearing's ("BPH") November 18, 2002, decision  
 18 to deny him parole. Petitioner has paid the filing fee. Petitioner request  
 19 this court grant leave of court to file late opposition to Respondent's motion  
 20 to dismiss. Petitioner mistakenly believed, the Court's Order To Show Cause  
 21 filed on July 31, 2007, gave him sixth days (60) of receipt of the Respondent's  
 22 motion to file an opposition. Petitioner has had difficulty acquiring the  
 23 necessary information that demonstrates his due diligence in prosecuting his  
 24 claims that were impeded by state-appointed attorney in his habeas corpus  
 25 proceedings that issued an Order To Show Cause. (See Exhibit 1, p. 1.)  
 26 Petitioner submits documents to this court to take judicial notice pursuant  
 27 to Fed.R.Evid. 201, of letters, order of Superior Court of California, County

1 of Santa Clara, and The State Bar of California letter and Inquiry Number:  
 2 05-9047. Petitioner, declare under penalty of perjury that the time between  
 3 his superior court denial on March 25, 2005, the request for reconsideration  
 4 (see Exhibit 2, p. 1) and his appellant court filing on November 2, 2005, was  
 5 due to his state-appointed attorney's failure to send his case file and  
 6 paperwork relating to the habeas corpus petition. Petitioner pursued the matter  
 7 with his attorney as instructed by the state trial court. (See Exhibit 3, p.  
 8 1, letter to attorney) Petitioner then contacted The State Bar of California  
 9 on June 5, 2005. (See Exhibit 4, p. 1) It took Petitioner's attorney over  
 10 five months to forward him his case file and paperwork. Petitioner would like  
 11 to also mention that his case was dismissed with prejudice on March 23, 2007,  
 12 because Petitioner did not apply for leave to proceed in forma pauperis nor  
 13 pay the filing fee. The Petitioner in that situation had sent the notice that  
 14 he must pay the filing fee within thirty days or the case would be dismissed  
 15 to his Uncle who had failed to pay the fee as he had promised Petitioner.  
 16 Petitioner did not learn of his failure to pay the fee until the March 23,  
 17 2007 order of this court. (See Case No. C 06-07344 JW (PR).)

18 For the foregoing reasons Petitioner respectfully request that this court  
 19 hear this case on the merits. Also, order that Respondent file with the court  
 20 and serve on Petitioner, within the time given an answer conforming in all  
 21 respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause  
 22 why a writ of habeas corpus should not be issued. The post-plea constitutional  
 23 violation of Petitioner's plea agreement does not ripen with time.

24 I, Petitioner: Declare under penalty of perjury that the foregoing is  
 25 true and correct. Executed on this Date:

26  
 27 December 11, 2007.

  
 IGNACIO POLVOS PENA/PETITIONER

CERTIFICATE OF SERVICE

CASE NO.: 07-03056 JW (PR)

CASE NAME: IGNACIO POLVOS PENA vs. SISTO, WARDEN

I hereby certify that I am the Petitioner in this case and that on December 11, 2007, I served a copy of the Petitioner's Opposition To Respondent's Motion To Dismiss; With Request For Leave Of Court To File Late Opposition To Respondent's Motion; Pursuant To Fed.R.Civil P. 6., the following:

Denise A. Yates, Deputy Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004

I declare that the foregoing is true and correct.

Date: December 11, 2007

  
IGNACIO POLVOS PENA, PETITIONER

F

MAR

KIRI  
Chief Executive Officer  
Superior Court of C.A. County of Santa Clara*[Signature]*

## SUPERIOR COURT OF CALIFORNIA

## COUNTY OF SANTA CLARA

In re: *[Redacted]*  
 IGNACIO POLVOS PENA,  
 On Habeas Corpus

No.: 96973

ORDER

The request for reconsideration is denied. The recent case of *In re Dannenberg* (2005) 34 Cal.4th 1061, provides further support for the final order issued in this case.

Regarding Petitioner's request for his case file and paperwork relating to the petition, Petitioner must further pursue the matter with his attorney. Court involvement is not warranted at this time.

DATED: 3/25, 2005

*[Signature: Linda B. Condrón]*  
 LINDA CONDRON  
 JUDGE OF THE SUPERIOR COURT



cc: Petitioner (at CSP Solano)  
 Petitioner's Attorney (Jack Gordon)  
 Attorney General (Brian Walsh)  
 District Attorney (Margo Smith)  
 Research

IGNACIO POLVOS PENA, D-17862  
CA. STATE PRISON SOLANO 15-W4L  
P.O BOX 4000  
Vacaville, CA. 95696-4000

APRIL 17, 2005

JACK GORDON, ATTORNEY AT LAW  
95 S. MARKET STREET, Suite 300  
San Jose, CA. 95113

Dear Attornet, Mr. Gordon,

I am proceeding with my litigation. I have informed the Court that I need all file and materials which you have in your possession pertaining to me and my legal case.

The Court advised me, in the Court's order filed March 30, 2005, to contact you and request that you send to me all files you have regarding my case.


In keeping with the Court's advisenment, I request you send to me the case file and paperwork relating to my petition.

It would be greatly appreciated if you could send the requested documents as soon as possible.

As this is my fourth attempt at requesting that you send copies of my paperwork and my case file, I am left with no other alternative but to make a formal complaint to the California Bar Association and other officials, if my documents aren't forwarded to me soon. I hope you are familiar with the Government Code which is controlling in this instance.

Thank you in advance for alleviating this problem and sending me my case file and paperwork.

Sincerely,

  
IGNACIO P. PENA D-17862

cc: Petitioner (at CSP-Solano)

EXHIBIT 2 PAGE 1

IGNACIO POLVOS PENA, D-17862  
CSP-Solano 15-W4L  
P.O. Box 4000  
Vacaville, CA. 95696-4000

June 5, 2005

THE STATE BAR OF CALIFORNIA  
1149 South Hill Street  
Los Angeles, CA. 90015-2299

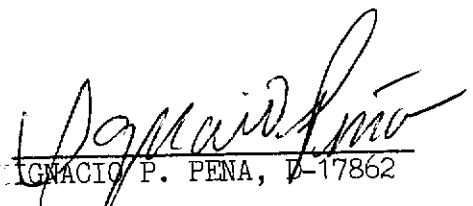
To Whom this may concern,

Enclosed are copies of letters I have written to Attorney at Law Mr. Jack Gordon. Mr. Gordon was appointed by the court to my case No. 96973.

As you may notice I have tried through letters and in many times through phone calls to obtain, and requested copies of my legal documents. Mr. Gordon have failed to provide my file. I even have filed a Motion to obtain my transcripts. See attached copies of court response. If you have any questions, please contact me.

Thank you for your time and consideration.

Sincerely,

  
IGNACIO P. PENA, D-17862



THE STATE BAR  
OF CALIFORNIA

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

OFFICE OF THE CHIEF TRIAL COUNSEL  
INTAKE

TELEPHONE: (213) 765-1000

TDD: (213) 765-1566

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

November 30, 2007

Ignacio P. Pena, D-17862  
CSP-Solano 15-W4L  
P.O. Box 4000  
Vacaville, CA 95696-4000

RE: Inquiry Number: 05-9047  
Respondent: Jack D. Dennis

Dear Mr. Pena:

Pursuant to your telephone call on November 28, 2007, we are sending you the information that you requested. The State Bar has determined to send you the original copies of the requested information, and we will maintain copies of said information in our files.

Thank you for your understanding.

OFFICE OF THE CHIEF TRIAL COUNSEL/INTAKE

**Filed**

DEC 17 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE**PROOF OF SERVICE BY MAIL****BY PRISONER "IN PRO PER"**

I hereby certify that I am over the age of 18 years of age, that I am representing myself, and that I am a prison inmate.

My prison address is: California State Prison - Solano  
Housing: 15-E2Low  
P.O. Box 4000  
Vacaville, California 95696-4000

On the "date" specified below, I served the following document(s) on the parties listed below by delivering them in an envelope to prison authorities for deposit in the United States Mail pursuant to the "Prison Mailbox Rule":

Case Name: IGNACIO PENA v. D.K. SISTO, WARDEN Case #: C 07-3056 JW (PR)

Document(s) Served: PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION  
TO DISMISS; WITH REQUEST FOR LEAVE OF COURT TO FILE LATE OPPOSITION  
TO RESPONDENT'S MOTION ; PURSUANT TO FED.R.CIVIL P. 6.

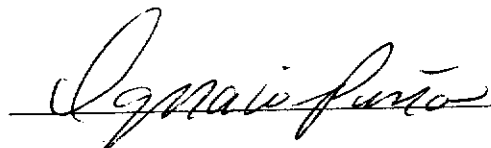
The envelope(s), with postage fully pre-paid or with a prison Trust Account Withdrawal Form attached pursuant to prison regulations, was/were addressed as follows:

DEPUTY ATTORNEY GENERAL  
455 GOLDEN GATE AVENUE, SUITE 11000  
SAN FRANCISCO, CA. 94102-7004

NORTHERN DISTRICT OF CALIFORNIA  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CA. 94102

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed on Dec. 11, 2007, in Vacaville, California.

"date"

Signature: 

Printed Name: IGNACIO PENA